

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: August 7, 1998

TO: Rochelle Kentov, Regional Director, Region 12

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: UNITE (Amedic System, Inc.), Case 12-CC-1244

This case was submitted for advice on whether the Union violated Section 8(b)(4)(ii)(B) by conducting a single, short demonstration on a public sidewalk some fifty feet from the entrance to an office building housing a neutral employer.

We conclude, in agreement with the Region, that the charge should be dismissed because Union's demonstration was not confrontational.

The Union has a bargaining dispute with the primary Employer, Amedic, which provides non-emergency patient transportation for various entities including the neutral, Comsis. Comsis has its offices in an office building fronted by a parking lot accessed by a street entrance. The public sidewalk in front of the parking lot is approximately 50 feet from the building entrance.

On April 30, 1998, the Union conducted a demonstration in front of the Comsis building, which also houses other businesses. Approximately 40 demonstrators lined the public sidewalk, split themselves on both sides of the parking lot entrance. Demonstration leaders used bullhorns and led chanting. The demonstrators themselves gestured to passing cars, and around half of the demonstrators displayed signs.⁽¹⁾ It appears that the demonstrators were stationary, i.e., they did not patrol across nor block the driveway entrance. Demonstrators also made no attempts to distribute handbills to cars entering the driveway entrance. The demonstration began around 9:45 a.m., after the neutral employer's Comsis' employees had already entered the office building and began work. The demonstration ended around 11 a.m. before employees in the building exited for lunch. Comsis does not allege that any deliveries were interrupted or that any business visitors were deterred because of this short demonstration.

In *Alden Press*⁽²⁾, the Board held that the patrolling and carrying of placards, at places apart from the neutral premises, was not picketing because it involved no confrontation with the neutral employer's employees, customers, or suppliers. In the instant case, the Union's demonstration similarly involved no confrontation. It involved no patrolling; it occurred outside hours when employees might be entering or exiting the building; and the locus quo of the demonstration some 50 feet from the building entrance apparently was intended to avoid such confrontation. Moreover, there is no evidence that the demonstration resulted in any interference with the neutral's operations.

This case differs from *Alden Press* in that the demonstration here occurred on the sidewalk in front of the building, rather than in large public areas located well away from the neutral. The presence of substantial numbers of demonstrators impeding building access has been deemed coercive.⁽³⁾ Conversely, a demonstration may be nonconfrontational even though it is held in close proximity to a building entrance.⁽⁴⁾ In the instant case, the demonstration apparently was not intended to confront employees and had no such effect, and no other element of coercive confrontation was present. Instead, the demonstrators instead were simply advertising their dispute to the public at large.⁽⁵⁾ Accordingly, the Region should dismiss the charge, absent withdrawal.

B.J.K.

¹ A short video tape made by a local TV station of the demonstration revealed the language on a few of these signs which read: "Power to the Workers"; "Stop Unfair Labor Practices";

"Local 1991 SEIU Supports [?] Action". One sign in particular specifically addressed the neutral and read: "Comsis No Sean Complices", which apparently translates to "Comsis Don't Be An Accomplice." Other signs, which were only partially visible on the video tape, clearly named the primary Employer Amedic.

² Chicago Typographical Union No. 16 (Alden Press, Inc.), 151 NLRB 1666 (1965).

³ See, e.g., SEIU Local 87 (IMA Commercial Properties), 20-CC-3189, Advice Memorandum dated June 28, 1991 (finding 8(b)(4)(ii)(B) conduct where 20 demonstrators were located 2 to 3 feet from the doorway made entrance difficult, and actual entrance blocking occurred for 3 to 5 minutes); SEIU Local 1877 (Service By Medallion), 32-CC-1352, Advice Memorandum dated January 19, 1993 (30 to 70 demonstrators massed in front of an entrance forcing people to squeeze by in order to enter); and Service Maintenance Employees Union Local 399 (The William T. Burns Int'l Detective Agency, Inc.), 136 NLRB 431, 436 (1962)(20 to 70 demonstrators marching in close formation "so close to the arena entrance as to indicate a clear threat of physical restraint upon those desiring to enter.")

⁴ See SEIU Local 77 (Westinghouse Electric Co.), 32-CC-1261, Advice Memorandum dated October 16, 1989 (where handbilling accompanied by bullhorns and signs displayed by 10 to 20 demonstrators occurred near building entrance for less than one hour on a few occasions during lunch time, no violation found since the demonstration otherwise imposed no burden on access to the building).

⁵ In *DeBartolo Corp. v. Florida Gulf coast Bldg. Trades Council*, 485 U.S. 568 (1988), the Court held that Section 8(b)(4)(ii)(B) does not proscribe peaceful handbilling, unaccompanied by picketing, urging a consumer boycott of a neutral employer. See also *Carpenters Local 1506 (Best Interiors)*, Case 21-CC-3234, Advice Memorandum dated March 13, 1997.